

Environmental Protection Agency

§ 51.860

be used for the conformity analysis as specified in paragraphs (b)(1) (i) and (ii) of this section:

(i) The EPA must publish in the FEDERAL REGISTER a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the FEDERAL REGISTER notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)"¹ must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R)², unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under this subpart, except § 51.858(a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that

are expected to occur under each of the following cases:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) any year for which the applicable SIP specifies an emissions budget.

§ 51.860 Mitigation of air quality impacts.

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 51.856 and the public participation requirements of § 51.857.

(f) The implementation plan revision required in § 51.851 shall provide that written commitments to mitigation measures must be obtained prior to a

¹Copies may be obtained from the Technical Support Division of OAQPS, EPA, MD-14, Research Triangle Park, NC 27711.

²See footnote 1 at § 51.859(b)(2).

positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

Subpart X—Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard

SOURCE: 69 FR 23996, Apr. 30, 2004, unless otherwise noted.

§ 51.900 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

(a) *1-hour NAAQS* means the 1-hour ozone national ambient air quality standards codified at 40 CFR 50.9.

(b) *8-hour NAAQS* means the 8-hour ozone national ambient air quality standards codified at 40 CFR 50.10.

(c) *1-hour ozone design value* is the 1-hour ozone concentration calculated according to 40 CFR part 50, Appendix H and the interpretation methodology issued by the Administrator most recently before the date of the enactment of the CAA Amendments of 1990.

(d) *8-Hour ozone design value* is the 8-hour ozone concentration calculated according to 40 CFR part 50, appendix I.

(e) *CAA* means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2003).

(f) *Applicable requirements* means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) Transportation controls under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled provisions of section 182(d)(1) of the CAA.

(12) NO_x requirements under section 182(f) of the CAA.

(13) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

(g) *Attainment year ozone season* shall mean the ozone season immediately preceding a nonattainment area's attainment date.

(h) *Designation for the 8-hour NAAQS* shall mean the effective date of the 8-hour designation for an area.

(i) *Higher classification/lower classification*. For purposes of determining whether a classification is higher or lower, classifications are ranked from lowest to highest as follows: classification under subpart 1 of the CAA; marginal; moderate; serious; severe-15; severe-17; and extreme.

(j) *Initially designated* means the first designation that becomes effective for an area for the 8-hour NAAQS and does not include a redesignation to attainment or nonattainment for that standard.

(k) *Maintenance area for the 1-hour NAAQS* means an area that was designated nonattainment for the 1-hour NAAQS on or after November 15, 1990 and was redesignated to attainment for the 1-hour NAAQS subject to a maintenance plan as required by section 175A of the CAA.

(l) *Nitrogen Oxides (NO_x)* means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.